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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT  
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)

BSI-430US8

First named inventor: Leonard Pinchuk Art Unit: 3738

Application No.: 09/657,041 Examiner: \_\_\_\_\_

Filed: 09/05/2000

Title: EXPANDABLE SUPPORTIVE BRANCHED ENDOLUMINAL GRAFTS

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Fax: (703) 872-9306

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703)305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

Small entity - fee \$ \_\_\_\_\_ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.  
 Other than small entity - fee \$1500.00 (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of Petition for Revival of an Application for Patent ABandoned Unintentionally Under 37 CFR 1.137(b) and Declaration Pursuant to 37 CFR 1.47(a) (identify type of reply):

has been filed previously on \_\_\_\_\_  
 is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ \_\_\_\_\_

has been paid previously on \_\_\_\_\_  
 is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 1.22 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance completing the form, call 1-800-PTO-9199 and select option 2.

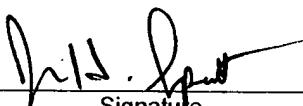
## 3. Terminal disclaimer with disclaimer fee

Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$\_\_\_\_ for a small entity or \$\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

## 4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D))].

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**



Signature

1/5/2005

Date

Jonathan H. Spadt  
Typed or Printed Name

45,122

Registration Number, if applicable

P.O. Box 980  
Address

610-407-0700

Telephone Number

Valley Forge, PA 19482-0980  
Address

Enclosures:  Fee Payment

Reply, including attachments

Terminal Disclaimer Form

Additional sheets containing statements establishing unintentional delay

Other: \_\_\_\_\_

## CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

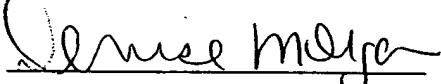
I hereby certify that this correspondence is being:

deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 872-9306.

1/5/2005

Date



Signature

Denise Morgan

Typed or printed name of person signing certificate



**DECLARATION PURSUANT TO 37 C.F.R. § 1.47(a)**

This Declaration is being made in accordance with 35 U.S.C. § 116, 37 C.F.R. § 1.47(a) and M.P.E.P. 409.03 *et seq.* because inventor Rysler Alcime cannot be reached after diligent effort, or because he refuses to sign. The facts as set forth below support the applicant's position that one of these two situations exists. The applicants ask, therefore, that the captioned Reissue Application proceed in the name of all three named inventors listed on the Supplemental Reissue Application Declaration attached hereto. What follows is a recitation of facts supporting this request made by the Attorney of Record in the captioned case.

This statement is being made by the available person having first-hand knowledge of the facts recited therein.

**IDENTIFICATION OF PERSON MAKING THIS STATEMENT OF FACTS**

Jonathan H. Spadt, Esquire  
Attorney of Record  
U.S. Serial No. 09/657,041

1. On January 5, 1999, U.S. Patent No. 5,855,598 (the '598 Patent) issued to Corvita Corporation and listed as the sole inventor, Leonard Pinchuck.
2. On August 18, 2000, a Petition to Correct Inventorship of the '598 Patent was filed which listed three inventors, namely Leonard Pinchuck, Rysler Alcime, and Yasushi Kato. Included in that filing was a Statement Pursuant to 37 C.F.R. § 1.324(b)(1) signed by Rysler Alcime.
3. On September 5, 2000, a Reissue Application was filed for the '598 Patent which was assigned Serial No. 09/657,041. An unexecuted Reissue Application Declaration accompanied that filing, the unexecuted declaration naming all three inventors, namely Leonard Pinchuck, Rysler Alcime, and Yasushi Kato.
4. On September 30, 2003, a Supplemental Reissue Application Declaration was sent to each inventor for signature, including Rysler Alcime. That document was sent via Federal Express® to:  
925 N.E. 122<sup>nd</sup> Street  
Miami, Florida 33161  
Receipt was confirmed on October 1, 2003 by R. Branchedor. A copy of the relevant confirmation information is attached hereto at Exhibit A.
5. Having not received the executed Supplemental Reissue Application Declaration back from Rysler Alcime, it was again sent, on October 23, 2003, to the same address as the one sent on September 30, 2003, via DHL® courier. Receipt was confirmed on October 24, 2003, by a Z. Alcime. A copy of the relevant confirmation information is attached hereto at Exhibit B.

6. Upon still not having received the executed Supplemental Reissue Application Declaration, a telephone number was found for Rysler Alcime at the above address and a phone call was made to him (at (305) 895-8747) on each of 5 different occasions by the below-named signatory between October 26 and November 14, 2003. No answering machine picked up on any of those occasions and no one answered the phone on any occasion (except for the one instance detailed in paragraph 7). In each case the phone rang for over 15 rings.

7. On one of those occasions, a person answered the telephone and when asked, claimed not to be Rysler Alcime. The person was rather incoherent, and when the below-named signatory asked if the person would take a message and ask Mr. Alcime to call back when he returned, the person responded, "No, you call back later" and hung up.

8. On November 17, 2003, the below-named signatory called the same number and did get an answering machine. A message was left requesting a return call but to date no return call has been received.

9. During the week of November 10, 2003, the below-named signatory called a co-inventor on the Reissue Application, namely Leonard Pinchuk, and inquired about the whereabouts of Mr. Alcime. Dr. Pinchuk responded that he did not know Mr. Alcime's whereabouts, but that he had heard that Mr. Alcime had started an import/export business trading with Haiti and that he did spend several weeks at a time in Haiti.

10. In early December, 2003, the below-named signatory received a call from someone claiming to be Rysler Alcime's wife. The caller indicated that Rysler Alcime was traveling overseas but that he was going to return in late December and would then look at the documents.

11. On or about January 20, 2004, when no word had yet been received from Rysler Alcime, phone calls were again placed to (305) 895-8747 on several occasions, totaling at least 6 times, through January 29, 2004. No contact or answering machine pick-up was achieved.

12. Again on December 8, 2004, we sent to Rysler Alcime a copy of the entire application to the last known address of Mr. Alcime by FedEx Courier. A copy of the documents which were sent are attached.

13. On December 9, 2004, we received an email confirmation stating that our shipment has been delivered (copy enclosed). Also enclosed are detailed results from the FedEx website tracking service stating that this package was delivered.

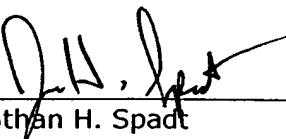
14. The name and last known address of the non-signing inventor is:

Rysler Alcime  
925 N.E. 122<sup>nd</sup> Street  
Miami, Florida 33161

15. For all of the above reasons, the applicants of this Reissue Application believe that a *bona fide* effort has been made to ascertain the whereabouts of Mr. Alcime

and obtain his signature on the declaration, and that he either is refusing to join or has not been found after diligent effort. Accordingly, the applicants respectfully request that the Supplemental Reissue Application Declaration enclosed be accepted as executed by Leonard Pinchuk and Yasushi Kato.

16. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.



---

Jonathan H. Spadt

**EXHIBIT A**



Close Window

## Track Shipments

### Detailed Results

Print

Tracking number	792979518324	Reference number	BSI-430US8
Signed for by	R.BRANCHENDOR	Delivered to	Recipient
Ship date	Sep 30, 2003	Delivery location	MIAMI FL
Delivery date/Time	Oct 1, 2003 9:42 am	Service type	Priority Envelope

#### Signature Proof of Delivery

Click Request copy of signature to view delivery information for this shipment.



[Request copy of signature](#)

Date/Time	Status	Location	Comments
Oct 1, 2003	9:42 am Delivered	MIAMI FL	
	9:41 am Delivery attempt	MIAMI FL	Customer not available or Business closed
	8:15 am On FedEx vehicle for delivery	NORTH MIAMI BEACH FL	
	7:39 am Arrived at FedEx Destination Location	NORTH MIAMI BEACH FL	
	7:02 am Left FedEx Ramp	FORT LAUDERDALE FL	
	4:17 am Arrived at FedEx Ramp	FORT LAUDERDALE FL	
	3:41 am Left FedEx Sort Facility	NEWARK NJ	
	12:42 am Left FedEx Ramp	PHILADELPHIA PA	
	12:24 am Arrived at Sort Facility	NEWARK NJ	
	8:44 pm Arrived at FedEx Ramp	PHILADELPHIA PA	
Sep 30, 2003	8:10 pm Left FedEx Origin Location	KING OF PRUSSIA PA	
	4:56 pm Pickup status	KING OF PRUSSIA PA	Pre-routed meter pkg picked up

[Track more shipments](#)

Email your detailed tracking results (optional)

Enter your email, submit up to three email addresses (separated by commas), add your message (optional), and click Send email.

From

To

Add a message to this email.

[Send Email](#)



FedEx Express  
Customer Support Trace  
3875 Airways Boulevard  
Module H, 4th Floor  
Memphis, TN 38116

U.S. Mail: PO Box 727  
Memphis, TN 38194-4643  
Telephone: 901-369-3600

11/17/2003

Dear Customer:

Here is the proof of delivery for the shipment with tracking number 792979518324. Our records reflect the following information.

---

#### Delivery Information:

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Signed For By: R.BRANCHEDOR



**Delivery Location:** 925 N.E. 122TH STREET

**Delivery Date:** October 1, 2003

**Delivery Time:** 0942

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#### Shipping Information:

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**Tracking No:** 792979518324

**Ship Date:** September 30, 2003

**Recipient:**

RYSLER ALCIME

925 N.E. 122TH STREET

MIAMI, FL 33161

US

**Shipper:**

DENISE H MORGAN

RATNERPRESTIA

1235 WESTLAKES DR STE 301

BERWYN, PA 193122416

US

**Shipment Reference Information:**

BSI-430US8

Thank you for choosing FedEx Express. We look forward to working with you in the future.

FedEx Worldwide Customer Service

1-800-Go-FedEx®

Reference No.: R2003111700100348422

**EXHIBIT B**

**These are the results of your query**

Waybill Number	Origin Service Area	Destination Service Area	Status
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► 8789223004 ► King Of Prussia, PA - USA ► Miramar, FL - USA Signed for by: Z ALCIME

Shipment delivered: October 24, 2003 10:46 ✓

**8789223004 - Detailed Report**

Date	Time	Location Service Area	Checkpoint Details
October 23, 2003	19:30	King Of Prussia, PA - USA	Shipment picked up
October 23, 2003	21:50	King Of Prussia, PA - USA	Departed from King Of Prussia, PA - USA
October 24, 2003	02:07	Cincinnati, OH - USA	Arrived at DHL Hub Cincinnati, OH - USA
October 24, 2003	05:28	Cincinnati, OH - USA	Departed from DHL Hub Cincinnati, OH - USA
October 24, 2003	06:21	Miami, FL - USA	Arrived at DHL Gateway Miami, FL - USA
October 24, 2003	08:28	Miramar, FL - USA	Arrived at DHL facility
October 24, 2003	08:34	Miami, FL - USA	Departed from DHL Gateway Miami, FL - USA
October 24, 2003	08:54	Miramar, FL - USA	With delivery courier
October 24, 2003	10:46	Miramar, FL - USA	Shipment delivered

For further inquiries please call 1-800-225-5345, prompt 3.

[Previous Page](#)

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JONATHAN H. SPADT

DIRECT DIAL: 610-993-4248

EMAIL: [jhspadt@ratnerprestia.com](mailto:jhspadt@ratnerprestia.com)

December 8, 2004

**Via FedEx Courier**

Mr. Rysler Alcime  
925 N.E. 122th Street  
Maimi, Florida 33161

Re: U.S. Patent Application by Leonard Pinchuk et al. for  
Expandable Supportive Branched Endoluminal Grafts  
Serial No.: 09/657,041  
Filed: 09/05/2000  
Our Ref.: BSI-430US8  
Your Ref.: 93-P0241CIP3-RE

Dear Rysler:

We are enclosing the following for your review and signature:

- 1) The Reissue Application filing including all of its enclosures dated September 5, 2000;
- 2) An Information Disclosure Statement filed February 23, 2001;
- 3) Status Request filed March 5, 2002;
- 4) A Supplemental Information Disclosure Statement filed May 28, 2002;
- 5) Amendment filed October 1, 2003 which includes Figures 14-17; Copy of Terminal Disclaimer; Copy of Assignment; PTO-1449; Copy of Certificate of Correction; Copy of patent columns with insertion of corrected text; Supplemental Reissue Oath/Declaration;
- 6) Communication dated December 9, 2003 which includes Replacement Sheet of Figures 14-17, Partially executed Supplemental Reissue Oath/Declaration, Claims 40-42 (underlined), Original U.S. Patent No. 5,855,598;
- 7) Information Disclosure Statement filed February 9, 2004;
- 8) Supplemental Amendment filed June 8, 2004;
- 9) Information Disclosure Statement filed July 14, 2004;

Mr. Rysler Alcime  
December 8, 2004  
Page - 2 -

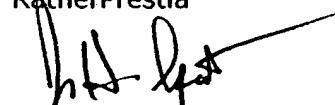
- 10) Information Disclosure Statement filed August 6, 2004;
- 11) Supplemental Information Disclosure Statement filed October 25, 2004; and
- 12) Supplemental Reissue Application Declaration.

Please sign and date the Supplemental Reissue Application Declaration (number 12 listed above) and return it to us for filing with the U.S. Patent and Trademark Office. For your convenience we are enclosing a return FedEx envelope. Please return this document to us no later than **December 15, 2004**.

Should you have any questions or comments, please let me know.

Sincerely yours,

RatnerPrestia



Jonathan H. Spadt

JHS/dhm

Enclosure: As listed above

## Denise Morgan

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**From:** FedEx [donotreply@fedex.com]  
**Sent:** Thursday, December 09, 2004 9:26 AM  
**To:** dhmorgan@ratnerprestia.com  
**Subject:** FedEx shipment 792154089306

Our records indicate that the shipment sent from Denise Morgan/RATNER & PRESTIA to Rysler Alcime has been delivered.  
The package was delivered on 12/09/2004 at 9:19 AM and signed for or released by T.MBA.41475.

The ship date of the shipment was 12/08/2004.

The tracking number of this shipment was 792154089306.

FedEx appreciates your business. For more information about FedEx services, please visit our web site at <http://www.fedex.com>

To track the status of this shipment online please use the following:  
[http://www.fedex.com/cgi-bin/tracking?tracknumbers=792154089306&action=track&language=english&cntry\\_code=us](http://www.fedex.com/cgi-bin/tracking?tracknumbers=792154089306&action=track&language=english&cntry_code=us)

### Disclaimer

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FedEx has not validated the authenticity of any email address.

Track Shipments  
Detailed Results[Quick Help](#)

Tracking number	792154089306	Reference	BSI-430US8
Signed for by	Signature release on file	Delivery location	Miami, FL
Ship date	Dec 8, 2004	Delivered to	Residence
Delivery date	Dec 9, 2004 9:19 AM	Service type	Priority Pak
		Weight	1.0 lbs.

Status	Delivered
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Date/Time	Activity	Location	Details
Dec 9, 2004	9:19 AM Delivered	Miami, FL	Left at front door. No signature required - release waiver on file
	8:28 AM Departed FedEx location	NEWARK, NJ	
	8:19 AM On FedEx vehicle for delivery	NORTH MIAMI BEACH, FL	
	7:31 AM At local FedEx facility	NORTH MIAMI BEACH, FL	
	6:22 AM At dest sort facility	FORT LAUDERDALE, FL	
	3:43 AM Departed FedEx location	NEWARK, NJ	
Dec 8, 2004	11:50 PM Arrived at FedEx location	NEWARK, NJ	
	8:07 PM Left origin	KING OF PRUSSIA, PA	
	4:38 PM Picked up	KING OF PRUSSIA, PA	
	9:22 AM Package data transmitted to FedEx; package not in FedEx possession		

[Signature proof](#)[Track more shipments](#)

Email your detailed tracking results (optional)

Enter your email, submit up to three email addresses (separated by commas), add your message (optional), and click **Send email**.

From

To

Add a message to this email.

[Send email](#)



JHS

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OFFICE OF PETITIONS

In re Application of :  
Pinchuk, et al. :  
Application No. 09/657,041 :  
Filing Date: 5 September, 2000 :  
Attorney Docket No. BSI-430US8 :

DECISION ON PETITION

This is a decision on the petition filed on 26 August, 2004, alleging, *inter alia*, unintentional delay under 37 C.F.R. §1.137(b).

The petition under 37 C.F.R. §1.137(b) is **GRANTED**.

BACKGROUND

The record indicates:

- the application was filed on 5 September, 2000, and, in the Office action of 2 July, 2003, the Examiner found that the re-issue application had been filed without, *inter alia*, a valid and fully executed oath or declaration because the oath/declaration filed failed “to identify at least one error which is relied upon to support the reissue application”; and
- a Supplemental Reissue Declaration filed with an amendment on (or about) 6 October, 2003 (over a 1 October, 2003, Certificate of Mailing), was unsigned and Petitioner’s reply filed on 11 December, 2003 (without a request and fee for extension of time), included an oath/declaration that was not a valid fully executed oath/declaration and no petition under 37 C.F.R. §1.47) was filed at that time;
- therefore, the application appears to have gone abandoned after midnight 1 October, 2003;

5-26-05



- no Notice of Abandonment was mailed by the Office;
- a petition under 37 C.F.R §1.47 was filed via FAX on 9 February, 2004, after the instant application went abandoned, and was not accompanied by a petition (with fee) to revive the application as abandoned due to unintentional delay (under 37 C.F.R §1.137(b)), and further the petition referenced, *inter alia*, an oath/declaration signed by named inventors save for Rysler Alcime (Mr. Alcime); and a declaration by Petitioner Jonathan H. Spadt (Reg. No. 45,122), and a copy of a letter from Petitioner to the non-signing inventor Mr. Alcime, however the copy of the letter to Mr. Alcime indicates that only the oath/declaration—and not the entire application (description, claims, drawings)—was sent to Mr. Alcime; thus the petition under 37 C.F.R §1.47 was dismissed on 9 December, 2004;
- the instant petition under 37 C.F.R §1.137(b) (with fee) was filed on 7 January, 2005, and was accompanied by a renewed petition under 37 C.F.R §1.47 and supporting documents therefor.

#### STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).<sup>1</sup>

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority. The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.<sup>2</sup>

Delays in responding properly raise the question whether delays are unavoidable.<sup>3</sup> Where there is

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<sup>1</sup> 35 U.S.C. §133 provides:

**35 U.S.C. §133 Time for prosecuting application.**

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

<sup>2</sup> Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.

<sup>3</sup> See: *Changes to Patent Practice and Procedure; Final Rule Notice*, 62 Fed. Reg. at 53158-59 (October 10, 1997), 1203 Off. Gaz. Pat. Office at 86-87 (October 21, 1997).

a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).<sup>4</sup> And the Petitioner must be diligent in attending to the matter.<sup>5</sup> Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.<sup>6</sup>)

The requirements for a grantable petition under 37 C.F.R. §1.137(a) are the petition and fee, a showing of unavoidable delay, a proper reply, and—where appropriate--a terminal disclaimer and fee.

Petitioner has satisfied the petition, fee, reply and statement/showing requirements of the regulation.

### CONCLUSION

The instant petition under 37 C.F.R. §1.137(b) hereby is granted.

The instant application is released to OIPE for further processing in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3214.



John J. Gillon, Jr.  
Senior Attorney  
Office of Petitions

<sup>4</sup> See: In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989).

<sup>5</sup> See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office supra.

<sup>6</sup> Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.



UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No: 17

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OFFICE OF PETITIONS

In re Application of :  
Pinchuk, et al. :  
Application No. 09/657,041 :  
Filing Date: 5 September, 2000 :  
Attorney Docket No. BSI-430US8 :  
DECISION ON PETITION

This is a decision on the petition under ¶(a) of 37 C.F.R. §1.47, filed on 7 January, 2005.

The petition is **GRANTED**.

BACKGROUND

The record indicates:

- the application was filed on 5 September, 2000, and, in the Office action of 2 July, 2003, the Examiner found that the re-issue application had been filed without, *inter alia*, a valid and fully executed oath or declaration because the oath/declaration filed failed “to identify at least one error which is relied upon to support the reissue application”; and
- a Supplemental Reissue Declaration filed with an amendment on (or about) 6 October, 2003 (over a 1 October, 2003, Certificate of Mailing), was unsigned and Petitioner’s reply filed on 11 December, 2003 (without a request and fee for extension of time), included and oath/declaration that was not a valid fully executed oath/declaration and no petition under 37 C.F.R §1.47 was filed at that time;
- therefore, the application appears to have gone abandoned after midnight 1 October, 2003;
- no Notice of Abandonment was mailed by the Office;

- the original petition under 37 C.F.R §1.47 was filed via FAX on 9 February, 2004, after the instant application went abandoned, and was not accompanied by a petition (with fee) to revive the application as abandoned due to unintentional delay (under 37 C.F.R §1.137(b)); that petition referenced, *inter alia*, an oath/declaration signed by named inventors save for Rysler Alcime (Mr. Alcime); and a declaration by Petitioner Jonathan H. Spadt (Reg. No. 45,122), and a copy of a letter from Petitioner to the non-signing inventor Mr. Alcime, however the copy of the letter to Mr. Alcime indicates that only the oath/declaration—and not the entire application (description, claims, drawings)—was sent to Mr. Alcime; thus, the original petition was dismissed on 9 December, 2004;
- the instant petition under 37 C.F.R §1.47 was filed on 7 January, 2005, and was accompanied by:
  - documentation supporting the allegations, *inter alia*, that Mr. Alcime was presented with a copy of the entire application, and he that he has not returned a signed copy of the oath/declaration; as well as
  - a petition (with fee) under 37 C.F.R §1.137(b), which latter petition has been granted.

This application and papers have been reviewed and found in compliance with 37 C.F.R. §1.47(a).

This application hereby is **ACCORDED status under 37 C.F.R. §1.47(a).**

As provided under 37 C.F.R. §1.47(a), the Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition.

Notice of the filing of this application also will be published in the Official Gazette.

**This file is being released to OIPE for processing as necessary to reflect the instant decision before being released for examination in due course.**

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3214.



John J. Gillon, Jr.  
Senior Attorney  
Office of Petitions

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

# SUPPLEMENTAL REISSUE APPLICATION DECLARATION BY THE INVENTOR

Docket Number (Optional)  
BSI-430US8

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is described and claimed in patent number 5,855,598 granted January 5, 1999, and for which a reissue patent is sought on the invention entitled EXPANDABLE SUPPORTIVE BRANCHED ENDOLUMINAL GRAFTS.

the specification of which

is attached hereto.

was filed on September 5, 2000 as reissue application number 09/657,041  
and was amended on \_\_\_\_\_  
(If applicable)

I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56.

I verily believe the original patent to be wholly or partly inoperative or invalid, for the reasons described below. (Check all boxes that apply.)

by reason of a defective specification or drawing.

by reason of the patentee claiming less than he had the right to claim in the patent.

by reason of other errors.

At least one error upon which reissue is based is described below. If the reissue is a broadening reissue, such must be stated with an explanation as to the nature of the broadening:

This reissue is a broadening reissue. At least the following errors exist as a basis for this reissue:

1. Originally the claims required that the liner of the trunk component have both a generally cylindrical upper body portion and a generally cylindrical lower body portion. The error is that this is unduly narrow in that the liner need only have a generally cylindrical body portion and two leg portions.
2. Originally the claims required several steps to make a supportive graft, including inserting and inflating a liner. The error here is that this is unduly narrow in that the specification also teaches simply a method of forming a supporting component comprising the steps of forming a support component and crimping at least one portion to provide a multiple-lumen portion.

[Page 1 of 2]

Burden Hour Statement: This form is estimated to take 0.5 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

## (REISSUE APPLICATION DECLARATION BY THE INVENTOR, page 2)

Docket Number (Optional)  
BSI-430US8

All errors corrected in this reissue application arose without any deceptive intention on the part of the applicant. As a named inventor, I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith.

Name(s) Registration Number

Jonathan H. Spadt 45,122

Paul F. Prestia 23,031

(additional listed on attached sheet)

Correspondence Address: Direct all communications about the application to:

 Customer Number

23122

Place Customer Number  
Bar Code Label here

OR

Type Customer Number here

<input type="checkbox"/> Firm or Individual Name				
Address				
Address				
City	State		ZIP	
Country				
Telephone	Fax			

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine and imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this declaration is directed.

Full name of sole or first inventor (given name, family name)

Leonard Pinchuk

Inventor's signature

*Leonard Pinchuk*

Residence

Miami, Florida

Date

*October 2, 2003*

Mailing Address

13704 SW 92 Court  
Miami, Florida 33176

Citizenship

USA

Full name of second joint inventor (given name, family name)

Rysler Alcime

Inventor's signature

Date

Residence

Miami, Florida

Citizenship

USA

Mailing Address 925 N.E. 122th Street  
Miami, Florida 33161

Full name of third joint inventor (given name, family name)

Yasushi Kato

Inventor's signature

Date

*Oct. 02, 2003*

Residence

Pembroke Pines, Florida 33029

Citizenship

USA JAPAN *YK*  
*10/2/03*

Mailing Address

311 S.W. 187<sup>th</sup> Avenue  
Pembroke Pines, Florida 33029 Additional joint inventors are named on separately numbered sheets attached hereto.

ADDED PAGE TO COMBINED DECLARATION  
AND POWER OF ATTORNEY FOR SIGNATURE BY JOINT INVENTOR(S)  
ON BEHALF OF NON-SINGING INVENTOR(S) WHO REFUSE(S)  
TO SIGN OR CANNOT BE REACHED (37 CFR 1.47(a))

I. WE are the above named joint inventors and have signed this declaration on our own behalf and also sign this declaration under 37 CFR 1.47(a) on behalf of the nonsigning joint inventors, particulars from whom are:

Full name of first Rysler Alcime nonsigning inventor who

refuses to sign  
 cannot be found or reached

United States of America

Country of Citizenship of nonsigning inventor

925 N.E. 122th Street, Miami, Florida 33161

Last known address of nonsigning inventor

II. Accompanying this declaration is:

(1) A STATEMENT OF FACTS IN SUPPORT OF FILING ON BEHALF OF NON-SIGNING INVENTORS  
(2) THE PETITION FEE OF \$130.00

Leonard Pinchuk

(type or print name of joint inventor  
signing on behalf of nonsigning inventor)

Yasushi Kato

(type or print name of joint inventor  
signing on behalf of nonsigning inventor)

Leonard Pinchuk 2/6/04  
Signature

Yasushi Kato Feb 06 '04  
Signature

**BEST AVAILABLE COPY**

PTO/SB/64 (09-04) (AW 10/2004)

Approved for use through 7/31/2006. OMB 0551-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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\$142  
TJW

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT  
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)

BSI-430US8

First named inventor:	<u>Leonard Pinchuk</u>	Art Unit:	<u>3738</u>
Application No.:	<u>09/657,041</u>	Examiner:	_____
Filed:	<u>09/05/2000</u>		
Title:	<u>EXPANDABLE SUPPORTIVE BRANCHED ENDOLUMINAL GRAFTS</u>		

Attention: Office of Petitions  
 Mail Stop Petition  
 Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450  
 Fax: (703) 872-9306

NOTE: If information or assistance is needed in completing this form, please contact  
 Petitions Information at (703)305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

**1. Petition fee**

Small entity - fee \$\_\_\_\_\_ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.  
 Other than small entity - fee \$1500.00 (37 CFR 1.17(m))

**2. Reply and/or fee**

A. The reply and/or fee to the above-noted Office action in the form of Petition for Revival of an Application for Patent ABandoned Unintentionally Under 37 CFR 1.137(b) and Declaration Pursuant to 37 CFR 1.47(a) (identify type of reply):

has been filed previously on \_\_\_\_\_.  
 is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ \_\_\_\_\_

has been paid previously on \_\_\_\_\_.  
 is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance completing the form, call 1-800-PTO-9199 and select option 2.

1500.00 CP

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